

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 1:18-cr-00092-MR-WCM**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
JAMES E. MACALPINE,)	
)	
Defendant.)	
_____)	

THIS MATTER is before the Court upon the Motion to Continue Docket Call/Trial (“Motion to Continue”) by Defendant James E. MacAlpine. [Doc. 28].¹

The background relevant to the Motion to Continue is as follows:

On August 8, 2018, Defendant James E. MacAlpine was charged in a Bill of Indictment with one count of tax evasion and one count of interference with tax administration. [Doc.1].

Initial proceedings were held on August 10, 2018. The case was calendared for the September 4, 2018 trial setting and then, pursuant to 18 U.S.C. § 3161(c)(2), continued to its current setting on the November 7, 2018 trial term.

On September 12, 2018, Defendant filed a document entitled “Motion to Dismiss/Challenge to Jurisdiction/Demand for Sanctions.” [Doc. 14].

On September 26, 2018, the Government filed a Motion in Limine to Preclude Certain Exhibits, Testimony, and Arguments (“Motion in Limine”). [Doc. 18].

¹ The Motion was filed on Defendant’s behalf by his stand-by counsel, Robert E. Nunley.

As described by that Order of Judge Keesler filed on October 26, 2018. [Doc. 25], Defendant has elected to proceed *pro se* in this matter and stand-by counsel has recently been appointed.

On November 1, 2018, Defendant, through stand-by counsel, filed his Motion to Continue seeking a continuance from the November 7 term. As grounds for the requested relief, stand-by counsel states that additional preparation time is needed as he was appointed as stand-by counsel on October 29, 2018, that discovery in this matter consists of 15,317 pages of documents, as well as various phone calls and voicemails, that he has not yet had the opportunity to review this voluminous discovery, and was unable to schedule a first meeting with Defendant until the morning of November 2, 2018, due to Defendant's work schedule. Counsel further states that "resolution of [the Government's Motion in Limine] could dramatically affect the preparation of a defense in this matter." Additionally, counsel represents that the Government does not object to the requested continuance, and that Defendant himself has agreed a continuance is needed. The Motion to Continue, however, expressly requests that the Pretrial Conference that is currently scheduled for Tuesday, November 6, 2018 be held as planned.

Under the circumstances presented, the Court finds that Defendant's Motion to Continue should be allowed. If the requested continuance were not granted, the Court finds that counsel would be denied "the reasonable time necessary for effective preparation, taking into account the exercise of due diligence." 18 U.S.C. § 3161(h)(7)(B)(iv). Additionally, under the circumstances, a failure to grant the requested continuance would result in a miscarriage of justice. See 18 U.S.C. § 3161(h)(7)(B)(i). Thus, the Court finds that the ends of justice served by the granting of the continuance outweigh the best interests of the public and the Defendant in a speedy trial. See 18 U.S.C. § 3161(h)(7)(A).

IT IS, THEREFORE, ORDERED that the Defendant's Motion to Continue Docket Call/Trial [Doc. 28] is **GRANTED**, and the above-captioned case is **CONTINUED** from the November 7, 2018 term in the Asheville Division. This Order does not impact the Pretrial Conference that is currently scheduled for Tuesday, November 6, 2018.

IT IS SO ORDERED.

Signed: November 2, 2018

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf
United States Magistrate Judge

